

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CCS:PSI:4

PLR-120791-15

Date:

October 29, 2015

### Legend

Taxpayer =

Spouse =

Trust =

Trust 1 =

Trust 2 =

Trust 3 =

Accountant =

Attorney =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Dear :

This letter responds to your authorized representative's letter dated March 31, 2015, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Taxpayer's generation-skipping transfer (GST)

tax exemption to certain transfers to Trust 1, Trust 2, and Trust 3, and a ruling that the automatic allocation rules of § 2632(c) apply to certain other transfers to these trusts.

### FACTS

The facts and representations submitted are as follows:

On Date 1, in Year 1, a date prior to December 31, 2000, Taxpayer and Spouse established Trust, an irrevocable trust for the primary benefit of their three children. The governing instrument of Trust provides for the creation of Trust 1, Trust 2, and Trust 3, which are to be allocated equal portions of the amount of annual contributions to Trust that qualify for the GST exemption under § 2631. Trust does not include any provision that would make transfers to Trusts 1 through 3 gifts of present interests in property within the meaning of § 2503(b). Trusts 1 through 3 have GST potential.

Taxpayer and Spouse made transfers to Trusts 1 through 3 in Years 2 through 5, all years ending on or before December 31, 2000, and in Years 6 through 9, all years ending after December 31, 2000. Taxpayer represents that the value of the transfers to Trusts 1 through 3 made in each of the Years 2 through 9 did not exceed the gift tax annual exclusion under § 2503(b) for the respective year in which the gifts were made.

Taxpayer and Spouse retained Accountant to provide them with tax and accounting services in each of Years 1 through 9. Accountant failed to prepare Forms 709 to report the transfers and to allocate to the transfers Taxpayer's GST exemption.

Taxpayer represents that Taxpayer and Spouse had at all relevant times sufficient GST exemption to allocate to the transfers made to Trusts 1 through 3 in Years 2 through 9. Taxpayer requests an extension of time to allocate GST exemption to the transfers Taxpayer made to Trusts 1 through 3 in Years 2 through 5, and a ruling that the automatic allocation rules of § 2632(c) apply to the transfers Taxpayer made to Trusts 1 through 3 in Years 6 through 9.

### LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the "applicable rate." Section 2641(a) defines applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) of 1 over the "applicable fraction." The

applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property and any charitable deduction allowed under § 2055 or § 2522 with respect to such property.

Section 2631(a), as in effect for years prior to Year 6, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c) as then in effect) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(a), as in effect for years after Year 5, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(c) provides that for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under § 2010(c) for such calendar year.

Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation Skipping Transfer Tax Regulations provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000, and in this case, Years 6 through 9. Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST Trust. Section 2632(c)(3)(B) provides that the term "GST trust" means a trust that could have a GST with respect to the transferor unless the trust is described in § 2632(c)(3)(B)(i) through (vi).

Section 2642(b) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for

purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer and if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 11 and such allocation shall be effective on and after the due date of the death of the transferor.

Section 26.2632-1(b)(1)(ii) provides, in part, that an automatic allocation of GST exemption is effective as of the date of the transfer to which it relates. A Form 709 need not be filed to report an automatic allocation.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(b) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to allocate Taxpayer's GST exemption to the gifts Taxpayer made to Trusts 1 through 3 in Years 2 through 5. Further, we rule that Taxpayer's GST exemption was automatically allocated to the gifts Taxpayer made to Trusts 1 through 3 in Years 6 through 9. The allocations are effective on the respective dates of the transfers and are based on the value of the transferred property as finally determined for purposes of chapter 12.

The allocations of Taxpayer's GST exemption should be made on Forms 709 for Years 2 through 5, filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Form 709. A copy of this letter is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Karlene M. Lesho  
Senior Technician Reviewer  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy for § 6110 purposes  
Copy of this letter